

PUBLIC SECTOR OMBUDSMAN

For as long as government has existed, guaranteeing citizens fair and equitable treatment under the law has been an issue and various protections have been utilized over the years. In modern times the public sector Ombudsman, where instituted, has been a successful and valuable guarantor of citizens' rights. By impartial and independent investigation of citizens' complaints, it have provided an informal and accessible avenue of redress.

The first public sector Ombudsman was appointed by the Parliament of Sweden of 1809. The Swedish Constitution divided and balanced power between the King and Parliament with the King having executive powers and Parliament retaining legislative power. The Ombudsman, who was appointed by and responsible to Parliament, was to protect individual rights against the excesses of the bureaucracy.

This first Ombudsman's Office, since its creation, has been the model for the public sector Ombudsman, and set the definition that is still accepted today: a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government. These acts may or may not include the administrative acts of the judiciary or the legislature, depending upon the statute. Ombudsman is a gender neutral term, used through out the world by women and men who hold the office.

The Ombudsman concept spread through Europe, and to this continent with the first offices being established in the United States in the mid 60's. This was a time in the USA when exposure of government secrecy and scandal, and when movements such as civil rights and good government created a political atmosphere more favorable to openness, and to establishing recourse for the aggrieved.

Hawaii established the first office in 1967. Since then a number of states, counties and municipalities have followed suit by establishing offices of general jurisdiction. The Ombudsman movement in the U.S.A. has also been characterized by offices that represent a departure from the Swedish model. These variations would include offices with general jurisdiction but appointment by a governor or mayor, legislative offices with special jurisdiction such as corrections, single agency ombudsman with statutory authority.

Characteristics of the Ombudsman

Early in the Ombudsman movement, the American Bar Association recognized the value of the institution and wrote in 1969 the criteria that remain the guidelines for creating an Ombudsman Office.

The American Bar Association recommends:

1. That State and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.
2. That each statute or ordinance establishing an ombudsman should contain the

following twelve essentials:

- (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff;
- (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body;
- (3) appointment by the legislative body or appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds;
- (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds;
- (5) a high salary equivalent to that of a designated top officer;
- (6) freedom of the ombudsman to employ his own assistants and to delegate work to them, workout restraints of civil service and classifications acts;
- (7) freedom of the ombudsman to investigate any act or failure to act by any agency, official, or public employee;
- (8) access of the ombudsman to all public records he finds relevant to an investigation;
- (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee;
- (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize;
- (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement;
- (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the Federal government, the Federal government should experiment with the establishment of an ombudsman or ombudsmen for limited geographical area or areas, for a specific agency or agencies or for a limited phase or limited phases of Federal activity.

4. That establishment of a Federal government-wide ombudsman program should await findings based on the experimentation recommended.

The United States Ombudsman Association, the national organization of public sector Ombudsman, has incorporated these criteria in its By-laws. They also are integral to the USOA annotated Model Statute for Ombudsman Offices which builds on 30 years of experience with the concept in the U.S.A.

An Ombudsman's power and responsibilities

The essential characteristics of an Ombudsman's Office are independence, the ability to investigate complaints which often includes subpoena power, the ability to criticize government agencies and to recommend changes that may be issued in

public reports. An Ombudsman, however has no enforcement or disciplinary powers.

The Ombudsman is a paradox, being both powerful and powerless at the same time. They can investigate complaints, choosing which are the most important and initiate investigations without complaints. They set an agenda by what they choose to investigate. They can determine whether a complaint is justified and seek remedies for it. They can compel people to talk to them and produce records, subject to the protections witnesses have in court. But they cannot make an agency do anything. They can, however, make their reports public. Aside from choosing what questions to ask and issuing subpoenas, their powers are mainly persuasion and publicity.

An ombudsman generally does not have the power to investigate the people who appoint the ombudsman and other elected officials, and does not have the power to look at the judicial acts of courts. Voters have remedies such as recall or impeachment for elected officials. Unfavorable court decisions can be appealed to a higher court. Complaints about judicial misconduct may result in an administrative sanction of a judge or rejection of an incumbent at the polls. The ombudsman is not an alternative to these traditional remedies.

Ombudsman Jurisdiction

This varies according to the law creating an office. For a general jurisdiction Ombudsman, the administrative acts of most, if not all, agencies in a local or state government are within an ombudsman's mandate. A specialty ombudsman looks at the acts of a single agency or a group of agencies that work in a single area of concern such as children issues.

Appointment of an Ombudsman

Enabling legislation will determine the appointment process of an Ombudsman. As this office of an Ombudsman is one that must operate with the trust and respect of the community, it is recommended that the selection process be one that is not unilateral but is shared by appropriate legislative and/or administrative committees and bodies. The efficacy of an office is largely dependent upon a widely held view of the Ombudsman as a person of integrity, who works with non partisan fairness and ethical behavior.

Confidentiality

Enabling legislation for many ombudsman offices requires the complainant's identity be kept confidential. People need to be able to talk to the ombudsman and staff in confidence. Some choose not to file complaints. Others want their complaints recorded but not pursued. Confidentiality is critical to creating confidence that complainants can talk to the ombudsman without their identity being disclosed against their will.

Complaint Handling

Complaints that come to an Ombudsman's Office are screened to determine if the complaint is in the jurisdiction of the Ombudsman, whether the complainant has utilized the government agency's established complaint process, and whether there

is validity under the law to the complaint. The Ombudsman helps citizens understand how government agencies operate, what are the appropriate laws, rules, policies, or how citizens may handle complaints themselves.

Those complaints that are accepted are objectively investigated by the Ombudsman. Informal resolution is often attempted with the agency. When this is not possible, the full power of the office may be utilized, which could result in a public report containing recommendations to the agency or to the legislature. Many jurisdictions provide whistle blower protection for both complainants and witnesses who may contact or be interviewed by the office. This is done to ensure the ombudsman has access to all of the facts in a matter and prevent retaliation against those who seek help from the office.

In resolving complaints, it is also the responsibility of the Ombudsman to identify patterns of abuse of power or negligence by government that would require legislative attention.

Reporting

Most public sector Ombudsman are required to report annually to the appointing authority. With much of the Ombudsman's work being done quietly and in confidentiality, the Annual Report is an opportunity for the Ombudsman to speak publicly on issues of concern. Annual Report will contain statistical information on the contacts by citizens during the prior year, an analysis of these statistics, and recommendations that flow from this analysis.

Advocacy

Ombudsman perform an unusual role in government. While they receive complaints from the public, their job is not to become an advocate for the complainant or the governments they have jurisdiction over. Ombudsman are charged with collecting and evaluating all of the facts regarding a matter as a neutral investigator. They determine if there was an error, unfairness or harm by the agency involved, or no basis to the complaint. Ombudsman make recommendations to correct wrongs done to individuals to improve the administration of government. If their recommendations are not accepted and good reasons not given, the ombudsman may become an advocate for their implementation.

Summary

With an Ombudsman's Office, people who have problems with government, have a place to seek solutions, independent explanations, investigations and recommendations.

An Ombudsman's Office, by providing a direct and informal avenue for the mediation of citizen grievances is a valuable tool for enhancing the relationship between a government and its citizens and ultimately for improving the administration of government itself.

For additional information about the public sector ombudsman, contact the **United States Ombudsman Association**.

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